No. 82-2082

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1983

YVONNE LARSEN, W. DANIEL LARSEN,
JOSEPH K. HARMON, and EDWIN J. GRAY

Petitioners,

vs.

JULIE FISHER,

Respondent

ON PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEAL, STATE OF
CALIFORNIA, FOURTH APPELLATE DISTRICT

RESPONDENTS' BRIEF IN RESPONSE

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The Court should grant this writ because generalized versions of the questions listed under REASONS FOR GRANTING THE WRIT I are presented by the decision below, and they are significant recurring constitutional issues concerning the application of New York Times v. Sullivan, that should be settled by this Court.

A. DO THE FIRST AND FOURTEENTH AMENDMENTS REQUIRE THAT DIFFERENT PRIVILEGES BE RECOGNIZED FOR MEDIA DEFENDANTS THAN ARE RECOGNIZED FOR NON-MEDIA DEFENDANTS IN PUBLIC PERSON DEFAMATION ACTIONS?

The question is not whether the New York Times actual malice standard applies to non-media defendants. The courts below were not asked to apply a standard more favorable to plaintiff than the actual malice rule. Fisher's position has been that both media and non-media defendants are protected by the actual malice rule and no more; and that the opinion and republication privileges are not constitutionally mandated for anyone. The discrepancy between media

and non-media defendants in this case involves the 'reporters' privilege' to repeat libels. The Appellate Court recognized a press privilege to republish libels. This issue is discussed in 82-2130

B. DOES THE NEW YORK TIMES ACTUAL MALICE STANDARD MODIFY TRADITIONAL SUMMARY JUDGMENT RULES AND PRESCRIBE A POLICY OF LIBERALLY GRANTING SUMMARY JUDGMENTS?

This issue was briefed by the parties and is addressed in the Appellate Court's decision. The trial court accepted defendants' argument that the First Amendment requires application of a different standard for summary judgments in public person defamation cases than in other civil actions. The Appellate Court rejected that position.

> "The summary judgments may be upheld only if the evidence, construed favorably to Fisher, raises no triable issues of fact. It is not sufficient the moving declarations, standing alone, would support a defense judgment. The trial court may not weigh the credibility of declarants nor pass on the merits of the issues presented, and must construe movants' declarations strictly."

C. DID THE APPELLATE COURT CORRECTLY APPLY THE ACTUAL MALICE STANDARD WHEN IT RULED,

> "Although mere negligence in investigating alone does not establish actual malice, evidence of the complete lack of investigation to determine the truth of the charges, of the Larsens' motive and intent in making the accusations, and their complete disregard of Fisher's denials may, by accumulation and by appropriate inferences, show recklessness."

The issue presented by petitioners as C. (p.13) is not supported by the record. It singly attacks one of the items of evidence that the Appellate Court said could be accumulated to show actual malice.

Petitioners' Statement of Facts does not give a full and accurate picture of the important facts. For example, it does not include the Goodman version of Fisher's 'bribery' attempt upon which the bribery charge made in the Oct. 24 speech was based.

Goodman's version:

"Julie Fisher walks into Tom Goodman's office, says: 'Look, Tom, we can't allow a strike to happen. We need the teachers' good will if we are to implement human relations training and a desegregation plan.' 'If you support my plan (tri-mester opt out desegregation plan) you'll gain such a good reputation you could name your job anywhere in the nation -- and we'd both be happy." (Appellant's Appendix, pages 530-531)

Fisher's version:

"I jokingly said, 'Tom let's work together. If the district solves these problems - integration and teacher relations - you'll look so good you'll get offers you can't refuse and we'll both be happy"

Blackmail speech version:

"She told the superintendent that if he agreed to collaborate with the teachers' union, she would see to it that he would gain such a good reputation that he could name his job anywhere in the country." But if he refused she would get him."

In addition to those issues cited by petitioners, the Court should review the opinion issue as it pertains to the Larsen defendants.

The Appellate Court stated in its decision,

> "The ninth cause of action alleged the Larsen campaign defendants defamed Fisher by criticizing her campaign advertising claim that windowless schools are costing taxpayers $100,000,000. extra."
>
> Viewed against the background of a heated political election, the trial court properly concluded Larsen's comments unambiguously expressed only her opinion and as a matter of law were entitled to First Amendment protection"

This issue is discussed in 82-2130.

CONCLUSION

This Court has clearly stated both the reasons for recognition of a qualified constitutional privilege for honest misstatements of fact, and why an absolute privilege would defeat the purpose for which the qualified privilege is necessary.

> "If it be conceded that the First Amendment was fashioned to assure the unfettered interchange of ideas for the bringing about of political and social changes desired by the people, then it can hardly be doubted that the constitutional guarantee has its fullest and most urgent application precisely to the conduct of campaigns for political office."

> "The principles underlying the First Amendment remain paramount. Whenever compatible with the underlying interests at stake, under the regime of that Amendment we depend for correction not on the conscience of judges and juries but on the competition of other ideas. In a political campaign, a candidate's factual blunder is unlikely to escape the notice of and correction by the erring candidate's political opponent. The preferred First Amendment remedy of more speech, not enforced silence thus has special force. (Brown v. Hartlage, 456 U.S. 45, 53,61)

"The use of calculated falsehood, however, would put a different cast on the constitutional question. Although honest utterance, even if inaccurate, may further the fruitful exercise of the right of free speech, it does not follow that the lie, knowingly and deliberately published about a public official, should enjoy a like immunity. At the time the First Amendment was adopted, as today, there were those unscrupulous enough and skillful enough to use the diliberate or reckless falsehood as an effective political tool to unseat the public servant or even topple and administration.

(Garrison v. Louisianna, 379 U.S. 75)

Appendix A.1 contains the text of a TV debate illustrating the 'market-place' type of political exchange referred to in Hartlage. In contrast, Appendix A.2 contains the text of the October 24 'blackmail' speech. As the following testimony of W. Daniel Larsen indicates, this type of speech wins elections.

Q. "Now what issues were discussed on the night of the (October) 23rd as potential material for your wife's speech?

A. "All I remember, the general discussion was that we had to start hitting a little harder if we wanted to win the election."

Q. "Was that something the Mr. Gray said?"

A. "Yes."

Q. "To you knowledge had Mr. Gray had experience with writing speeches for other candidates?"

A. "Yes."

Q. "Did Mr. Gray make any suggestions as to how to go about hitting harder?"

A. "Just to call attention to the public what Julie Fisher had done that we didn't agree with." "He was a political professional, had been through it many times and knew that you couldn't beat an incumbent by laying low, that you had to come out in a forceful manner if you wanted to beat an incumbent."

Q. "Did you agree with him on this point?"

A. "Yes, I did."

Q. "Did your wife?"

A. "She was a reluctant candidate to start out with and it wasn't in her nature to come out and criticize anyone, so it was difficult for her to accept."

Q. "Did you accompany your wife to the University Club?"

A. "Yes."

Q. "When did she first receive a copy of the speech?"

A. "Just abgout a half hour before she arrived."

Q. "Did she read it before she gave the speech?"

A. "Yes."

Q. "Did you wife express concern over any of the language contained in the speech?"

A. "Not the language. She was just concerned about making the speech because she didn't -- as I testified before, she just didn't want to criticize Mrs. Fisher in this manner." "She was reluctant to make a hard-hitting speech."

Q. "Did you say anything to her to encourage her to give the speech as written?"

A. "Yes."

Q. "What did you say to her?"

A. "Told her that the time had come when we had to make some hard-hitting speeches if we wanted to win the election."

Q. "Did Mrs. Larsen continue to express hesitation concerning certain statements attacking Mr. Fisher?"

A. "No, she agreed that it had to be done."

Defendants in this case seek recognition of new absolute privileges for libel defendants and limitations on the use of investigatory

failure as evidence of reckless disregard of the truth. The net affect would be to increase the percentage of 'blackmail' type political communication and lessen the percentage of those of the 'market-place' type.

On the other hand, if the Court rejects the proposed absolute privileges and re-emphasizes that the actual malice standard is to protect only 'honest' misstatements of fact, political professionals will have to be more cautious when composing 'blackmail' type pieces. The net affect will be to encourage 'market-place' type political communication.

The Court should review this case.

Dated: October 9, 1983

Respectfully submitted,

Julie Fisher
Respondent

KPBS BALLOT '77, FISHER - LARSEN, 11-4-77

Penner (moderator) - "The state is mandating competency tests; the courts are requiring school desegregation; the teachers can now collectively bargain and have their demands legally heard, and the administration is very visible and strong and yet it is the school board that is actually accountable for what transpires within the San Diego Unified School District. How is it possible for a school board that only meets two afternoons a week to be a policy making body under all the influences that are apparently upon it?

Fisher - "Well I think this is one of the major problems and I recommended a change in the manner in which information comes to the Board that I think will assist the Board. Currently the school board really doesn't make the decisions; the school administration makes most of the decisions and gives the information that will lead the Board to rubber-stamp the school administration's decisions to the Board. I recommended that we - there are two votes now on the Board, John Witt and myself, for removing the job dependency of the people in the testing and evaluations services out from under the Superintendent so we would have an independent body. Right now people in our evaluations departments evaluate programs, but the the people that they are evaluating have determination over their jobs. I recommended that we establish an independent commission to make job recommendations directly to the Board for these two departments. It wouldn't cost any extra money at all. There would be no extra bureaucracy but what it would do would be to allow us to give major proposals to this department to analyze."

Penner - "This is a $250,000,000. operation."

Fisher - "$281,000,000. operation."

Penner - "What parallel is there in the business world for such a large financial operation to be run by a body who meets only twice a week?"

Fisher - "Well, I don't think there is one. I think, especially when you consider the filtering out of significant information, like - one of the controversial issues during the campaign has been over the building of windowless schools, and that was an example where the Board was given information on the cost of window breakage but wasn't given information on the extra cost of construction and maintenance; and we're spending over 100 million dollars extra, simply becuause of poor information. It's a real burden to the taxpayers."

Penner - "Yvonne, of course I will pose the same question to you. Do you really think it's feasible for the Board to be an effective board, meeting only two afternoons a week, and not be a rubber-stamp of a strong administration?"

Larsen - "I certainly think that they can; and I think it is time that the five elected Board of Education members do assume a position and a posture situation of being the Board of Education. They're the ones that hire and/or fire the Superintendent. They are responsible for establishing the policy and then asking the Superintendent and the administrative staff to implement what the Board of Education so decrees. I feel that if the five elected board members are responsive to one another and if they have an open mind, if they haven't made up their minds on all the decisions that they're projecting, they do have good dialogue and

all, they can take very strong leadership in seeing that their policy is implemented. I have chatted with some of the other board members and they certainly challenge the fact that my opponent says the information is filtered down; and I think if she feels that the information is filtered down that she should have done something about it up to this point in time."

Penner - "Like what?"

Larsen - "Certainly the charges that she has made have not been substantiated against the administration. The other board members say this is not true, so I wonder why she continues to articulate that. She says it is true and that it's filtered down; well, then, she has not done a good job and has not been an effective board member and an effective representative of the people. So she seems to be the one who is having the problem getting the information and I think for that reason she's ineffective."

Penner - "Just one more question, then we'll let Julie respond. Yvonne, some observers say that the administration really holds plums, if you will, for the board members; can determine which members can go on trips to distant and lovely places and that perhaps this is one method that the administration can use to keep the school board a rubber-stamping entity."

Larsen - "I haven't heard about any plums and I really don't think they are there."

Penner - "Julie do you want to respond?"

Fisher - "Well let's take an example of one of the charges, that windowless schools are costing 100 million extra dollars. I had this on a TV commercial. I'm a mathematician; I made the calculations very carefully,

and last week Yvonne accused me of lying, and she sent letters to the TV stations asking them to withdraw the TV commercial. I provided her and provided the TV stations with my calculations - with the substantiation - and it was enough for the TV stations. They've kept the commercial going. Now, I've asked Yvonne, if she doesn't agree with my figures - they're written very simply - any fifth grader should be able to understand them - if she doesn't agree with them then let's have an open debate and discuss them, otherwise, she should apologize. We should set an example for students. You don't make false accusations."

Penner - "OK Yvonne, and then we'll go on to Dennis for the next question."

Larsen - "The information that was given to me is from reports of the imcumbent. They are not from reports of any substance and or background material. They do not add up; they are without foundation and therefore I cannot find the answer to the querry that we have. She has said in her commercial and also in her statement, her piece of literature, 100 million dollars extra; now she's saying that she's projecting it over a 25 year period; but she doesn't say that on her television commercial; she doesn't say that on her printed literature. She talks about a construction program that is 103 milliion and then it becomes 143 million; last night it became 181 million dollars. Her figures are not consistent. She may be a mathematician, but she is playing games with mathematics and I think it is demeaning to the integrity of the voters that she is doing this."

Fisher - "Yvonne, if you disagree with the figures then don't you think we owe it to the public to discuss them openly? If you've got your figures and I've got mine, let's

discuss it in an open debate. You know costs of construction programs are not a matter of opinion; these are all on the record; we have mortgages and the 181 million figure I got from the records of our bonding company from our accounting office. You just list the projected cost of the building program, and it's there. There's no controversy about that."

Penner - "Julie, what we're going to do is move to another issue. We'll let Dennis go on with that. Dennis?"

Dennis Cheney - "One of the major policy decisions that the school board has made during the last year is on school desegregation. On a matter of desegregating San Diego Schools, you have expressed confidence in this plan. In light of the fact that many people have said that voluntary plans just have never worked in the United States?"

Larsen - "Because I think the various aspects that are available for implementation are so outstanding that they do give us an opportunity to accept them on a voluntary basis. I also feel that a lot of people have become very, very aware that the courts are looking over our shoulders and, if we do not come to a good voluntary program, what is farther down the road is going to be much more expensive and not in the best interest of the people. The Kaplan survey has indicated that the community wants to respond to a voluntary program and that they probably will respond to a voluntary program. The beginning of the statistics and all, of responsiveness to the voluntary program are an extremely good indication that the community will respond if we continue to properly tell people the options that are available and explain the various programs; the learning centers, the magnet schools, fundamental schools, and so on and so forth. I think

that the people will be very responsive and - San Diego has a marvelous pot pouri of people - that I think really are more geared to making a positive statement and I feel that it is going to work. As an elected Board member I will certainly encourage the voluntary way because I support the neighborhood schools. I'm opposed to mandatory busing and I think that the people will respond to the voluntary program."

Dennis - "Some people claim that integration doesn't improve the education for minorities. How do you respond to that charge?"

Larsen - "Well I'd like to see the best opportunity for education regardless of what site a student is attending and I think that we all need to learn to work together. I think we're putting a major burden on the Board of Education, where really the total aspect of integration is not just a Board of Education one; it is a community one. We do need to become acquainted with people of all kinds and have the experience of working together, really, to perpetuate what the United States of America is."

Dennis - "In your view, if integration is successful here in San Diego, do you think the schools should reflect the 65% - 35% racial split in the district?"

Larsen - "I think we'll have to see what happens and certainly those are goals. But, it remains to be seen how our population quotas and all are in time to come also."

Dennis - "Do you think each school ought to reflect the racial split of the population?"

Larsen - "I don't think it can in the initial stages; maybe down the road it can."

Dennis - "Julie you were one of the few

board members, the only board member to vote against the desegregation plan finally submitted to the court. Does this mean you don't think voluntary efforts will be successful?"

Fisher - "Well, no. First of all the recommendation made by the commission to the Board was not a voluntary plan. Probably the most important vote - and I attended almost all the commission sessions - the most important vote was when the commission had a choice between recommending one year of voluntary programs and then mandatory programs or three years of voluntary programs; and they rejected the recommendation for three years of voluntary programs by a vote of 62 to 2. So the recommendation of the commission was to try voluntary programs for one year and then move to mandatory programs and I reject that. I think that we should have a voluntrary program, a strictly voluntary program. The program that my opponent advocates would cost the taxpayers an additional 25 million dollars a year. I think it would just break the back of our taxpayers and I don't think we can spend that kind of money. I recommended an alternative that would cost not more than four million dollars a year, not any more than we are spending now; and it would be effective. I think you have to take other things into consideration. You can't just drain taxpayers and make them move out of their homes just for an integration program and I wouldn't favor any one that did."

Dennis - "On the windowless schools issue you brought up money and now you're bringing up money in this case."

Fisher - "I think that's one of the essential differences between my opponent and myself."

Dennis - "Wouldn't mandatory busing be cheaper

than any of the voluntary plans?"

Fisher - "I think mandatory busing would be tremendously expensive in terms of the community relationships and I don't think we have to have a mandatory program."

Dennis - "Yvonne, you wanted to respond?"

Larsen - "I'm, very fiscally accountable for funds that are used. But one question I would - or statement I would like to respond to as far as Mrs. Fisher's plan that she continues to promote. Her plan is in essence as opt out integration plan and it in no manner, shape or form would fulfill a court order."

Fisher - "Well, I attended the court sessions - all 30 days. I was the only Board member who attended the sessions. You know when you sit and you listen to the arguments and you listen to the judge, I think you get a very good idea of what would satisfy the judge and I would bet any amount of money that my program would satisfy the judge without any mandatory movement."

Larsen - "No person or group has ever come forth to endorse her plan, to say that it is functional or workable."

Fisher - "That's not true, because the district now has adopted the opt out part with the learning centers. Initially, the learning centers were going to be mandatory, and now they are on an opt out basis and I think that's a victory for my idea."

Dennis - "Yvonne, one last point and then we'll have to get to another question."

Larsen - "The learning centers were always projected as voluntary programs. They were not mandatory programs."

Fisher - "I'll get the tape that says differently."

Penner - "Yvonne, there's increasing truancy among upper middle class white students with the reason often given that boredom has set in. Do you feel that the quality of the teaching in the classroom is contributing to this?"

Larsen - "I would hate to think that it is, but I do feel that the challenge of 1977 and the more sophisticated world our students live in certainly, probably makes what used to be considered a very motivating type of atmosphere more than it might be today - I do feel that we should have a great deal more emphasis on career and vocational training and work experience programs and all that really can satisfy and challenge students - extra motivation. And I would certainly encourage as far as your reference to quality of teachers, that the universities and colleges continue to address themselves to a background of training for teachers - that they do have all the skills that are available to really give the students a good opportunity to learn and to keep up with the years and with current things and to be good teachers."

Penner - "What about the teachers who are already in the system - the tenure system which permits teachers after seving a probationary period to stay in their positions permanently no matter what happens; no matter what. If they commit some crime certainly they will be removed; but if their teaching does deteriorate what recourse is there if there is tenure?"

Larsen - "I think that we really must start to consider that tenure is an antiquated and out of date piece of legislation. It

was something that served at a particular time in our history and I hear so often from students now when I'm out at the various sites and all, 'What can you do about tenure?' Well we as the Board of Education really cannot do much of anything other than bring to the people that it is a problem. It is a State of California problem to change anything in the tenure area; but we do need to - now that the teachers have the opportunity to have collective bargaining - address ourselves to the fact that tenure is not in the best interests of the students and perhaps it has outlived its life span and should be eliminated."

Penner - "Julie do you think collective bargaining is the answer or one of the answers?"

Fisher - "I wonder if I could just comment on the truancy issue?"

Penner - "I was going to get to that"

Fisher - "Because I.."

Penner - "Go ahead."

Fisher - "Truancy has been one of the problems that I've worked the hardest on. I found that that was a major concern of people in the schools and it was something that was brushed, swept under the rug by the central administration. I conducted several studies by just going to the computer printouts and analyzing the relationships between truancy and academic performance and between truancy and violence; and I understand my opponent is having a news conference today to accuse me of violating the right of privacy laws or something - but absentee records are not private. Every school has absentee lists that they circulate throughout the school every day, so I haven't revealed anything. I think that the particular point,

why this came out was because while I was researching absentee records I found that there were a number of students who were not enrolled in the minimum number of classes and for several schools we were collecting more funds than we were eligible for."

Penner - "What do you think is responsible for this?"

Fisher - "Well, I think it is a problem that hasn't been faced up to. I think it's been a big help to have a board member bring it out and have the newspapers cover it because that's given strength to the people in the schools. Now we have more schools that are setting limits for absenteeism. I don't think students should have the choice of whether they go to school. I think it's nice to make classes - and we should try to make classes attractive.."

Penner - "Why do you feel the students are not going to school?"

Fisher - "Well I think that we're giving them the choice by not enforcing the rules."

Penner - "You mean that if they have the choice of going or not going their preference would be to not go?"

Fisher - "I think students are just like people going to work. How many people would go to work if they had the choice of going or not going? I mean going to school is a students work and they have to go whether they like it or not. I think we ought to start from there, then we should make the classes attractive and try to interest the students. If they have that decision when they're young that means it cuts out a lot of decisions when they're older."

Penner - "Well let's look at the teachers.

To what degree do you feel that teachers are responsible for not motivating or inspiring students to stay in school?"

Fisher - "Well, I think that most teachers - there's a big range in which any individual can perform. Almost all of our teachers can be excellent teachers or mediocre teachers depending on whether they put out that extra effort. I think the Board's responsibility is to try to make the classroom climate such that it will encourage the teachers to put out that extra effort. Like, - class size is a very important thing. If you have 40 students, you know, five classes of 40 students, you get so harrassed that you get discouraged and you don't put out that extra effort."

Penner - "What do you think is the optimum number of students in a class?"

Fisher - "Well, I think it depends on the class. I certainly wouldn't have 200 contacts for a secondary teacher."

Dennis - "Julie again, last June during the strike you sided with many of the teachers' claims and even granted them amnesty. In this election year you've been endorsed by the teachers' association and organized labor. How do you respond to the charge that you have lost sight of your public responsibility and have given in to the teachers far too often?"

Fisher - "First of all, I don't favor strikes and I didn't agree with the strike. I think that many of the claims of the teachers and many of the things they were asking for should be given, like a reduction in class size. I think the Board - probably the problem is that the Board of Education has adopted the attitude of the top administration and that is that collective bargaining

means an all out war between the management team and the teachers; and I just don't go along with that. I think that if we work together then we can come up with a better educational system. There are many areas where I differ with the teachers' organization. The area of testing is one area. I think that we should have more testing and we should have tests at the end of each year and we should have definitive measurements of where a child is."

Dennis - "You brought up collective bargaining and Yvonne brought up collective bargaining in relationship to tenure. Do you think now that teachers can join as co-equal negotiators in their own contracts that they should give up the protection of tenure?"

Fisher - "Well, I think that the reason for tenure is to free teachers from political influence. In communist countries if you have a change of government, the first thing they do is to fire all the teachers and then they put in teachers who will indoctrinate the students. That is the basic reason for tenure. Tenure should not be used to cover up mediocrity. During the past year there have been a few instances of teachers who have been tenured teachers who have not been able to control their classes and they've been let go. There is a procedure for releasing tenured teachers. But I think as part of collective bargaining the Board of Education should require that teachers take on greater responsibility for maintaining the quality of teaching - like - math teachers should set standards for math teachers and enforce them; you should have a peer pressure."

Dennis - "Yvonne, you've been critical of the Board's granting amnesty to the striking teachers, claiming it was letting law breakers go free; but what would you have done in those crucial days in June when the teachers

were out on strike?"

Larsen - "May I speak briefly to what preceded this. I find great fault with the fact that the San Diego Teachers' Association became the bargaining agent for the teachers in March '77; that contract negotiations between the SDTA and the District or their representative started May 11; the strike was called June 6. This is a three week period of time. Most people who have worked with contract negotiations know that three weeks of conversation really does not cover full base in providing a good meaningful contract. The Rhodda Act was put into law a year or two ago to give protection to public education and to give them the opportunity to resolve their differences. Now in this particular instance in San Diego, just having had the SDTA become the bargaining agent - have this brief period of time to really give the first try to the Rhodda Act - to have the San Diego Teachers' Association call a strike at the time that they did without using the Rhodda Act with its clause for mediation and fact finding, I think was incredible. Strikes by public employees are illegal; I also think they are immoral. I think the fact that this was the end of the school year was definitely a political ploy. Many students were put into an extremely emotional situation by this. Students were ready to graduate; they didn't know whether their grades would be on their transcripts or they would be eligible to go to college and certainly the end of the year capsulizes a lot of hard work for many students and it's a most emotional time and the strike, the timing of it was just an incredible situation and certainly a blot on San Diego. And I feel very strongly that the Board of Education members and the San Diego Teachers Association, District representatives etc. need to have more good dialogue and meaningful communication and I feel as an elected Board

member that I have not made up my mind on everything, that I have the skills to listen and to work together and to give leadership to see that this blot would never happen again."

Dennis - "Now that you've led us up to the period of the strike, what would you have done once they went out on strike?"

Larsen - "I would not have granted them amnesty and I know that you cannot go out and certainly put all of the teachers in jail because there was a sizeable number of them, but I certainly would not have complimented them."

Dennis - "Would you have fired themn?"

Larsen - "The ramifications legally of firing that number of teachers would be insurmountable."

Dennis - "But you have supported the statewide initiative that would fire striking public employees?"

Larsen - "I have not. I have not signed it. After the election is over I certainly am going to give some thought to what I'm going to do in that area; but they would not have received a pat on the back and say, 'Good show, you defied law and order, what an example you're doing." I probably would have put a certificate or a statement in their folders noting that they had gone out on strike or an additional dock in pay or a fine for it."

Dennis - "In general do you think the Rhodda Act that brought collective bargaining to education has benefited education?"

Larsen - "From the first breath, certainly not. But I think that the idea of it, if it is utilized in the future, certainly

can solve lots of differences."

Penner - "A couple of quick questions in the last two minutes of the program, and the responses will have to be brief as well. Grades A B C D and F are often given to students to identify the quality of their work. Julie, I'm giving you a chance to grade the San Diego City Schools. In terms of quality of education, what grade would you choose?"

Fisher - "Well, I think for a child who is motivated and goes to school they would be a top A. My son and his..."

Penner - "I'm talking about the system itself."

Fisher - "I think it depends - we're meeting the needs of motivated students who go to school and who study. For the children who are less motivated I think we can do a much better job. I think we have to work on factors like truancy."

Penner - "You would give two grades?"

Fisher - "Well I think that it's warranted."

Penner - "Yvonne, same question."

Larsen - "I'd love to say it's an A but I think it's probably somewhere in the B range."

Penner - "One other very fast question. As you know Senator Briggs has introduced an initiative to bar homosexual teachers from the school system. Do you support that initiative?"

h**Larsen** - "I haven't taken action on it."

Penner - "Do you have any feelings about it?"

Larsen - "I think if the homosexual teacher would be proselytizing in the classroom they should not be in the classroom."

Fisher - "We agree on something."

Penner - "Julie?"

Fisher - "I think I'd take the same position."

Penner - "Would you then, if the initiative did get on the Nov. ballot, would you vote for it?"

Fisher - "I haven't taken - I don't think I would."

TEXT OF SPEECH READ BY YVONNE LARSEN
OCTOBER 24, 1977

Ladies and Gentlemen:

Several months ago, after devoting many years to my family and serving in various capacities as a community volunteer, I made the decision to run for the San Diego School Board.

As you will recall, we had just gone through a wrenching and unlawful strike goaded on by many of the school teachers in the district by the teachers' union leadership.

And we all read with horror the accounts of my opponent's irresponsibility as a member of the school board. We watched her as she leveled a series of scurrilous charges against the superintendent of schools. This sorry chapter in the history of our schools was nothing less than blackmail.

She told the superintendent that if he agreed to collaborate with the teachers union, she would see to it that he would gain such a good reputation that he could name his job anywhere in the country.

But, if her refused, she would get him. She would accuse him of many things and publicly call for his resignation.

The superintendent refused to go along

with what was almost a form of bribery.

Frankly, I hold no brief, either for or against the superintendent. He was fully able to defend himself against the false and vicious charges he was threatened with.

But outright blackmail is not a quality I take too lightly.

It was this shameful action by my opponent which presaged the illegal strike hatched by the teachers' union leadership in the waning weeks of the spring semester.

The judge whose responsibility it was to decide on the matter called the strike -- and these are his words -- "a shameful blot on the history of the teaching profession in San Diego."

Judge Lazar said "the strike was instituted to use its disruptive effect for the school process and the children.

"The only persons directly affected by the strike were the children who, in blunt language, were exploited as hostages, for the purpose of a political power play." the judge said.

The strike -- by any standard -- was illegal. In my opinion, it also was immoral. And my opponent was associated with it every step of the way.

Unfortunately for everyone -- and especially for our children, the students -- it came

at the worst possible time. For many parents, it was a disquieting event, to say the least. For the teaching profession...especially the public's perception of the profession...it was a net minus, a step backward.

And, the thousands of teachers who refused to leave their classromms to violate a court order...the teachers who stayed with their students despite the intense pressures of the teachers' union leadership to break the law...wrongfully suffered from the understandable backlash of the community.

As if the strike were not enough, my opponent then voted to reward open disobedience of the court order to end the strike. She voted to reward the striking teachers with amnesty.

Her vote, coming as it did from one who earlier sought to blackmail the school superintendent, should not have been surprising.

But, still I was shocked.

How could a member of the San Diego School Board -- a person who is sworn to obey the law and set a good example for our children -- so condone the illegal activities spurred on by the teachers' union that she would actually vote to reward these unlawful activities with amnesty?

I remembered the words of the judge: "The children were exploited as hostages...for

the purposes of a political power play."

Certainly, that sort of cynical behaviour spurred on by the teachers' union leadership is not deserving of amnesty.

It was on the basis of my opponent's shoddy, unprofessional, divisive and irresponsible performance..and failure to meet the obligations of the public trust vested in her as a member of the San Diego School Board that I made my decision at the last moment...to enter the race.

I believed the people wanted a change. Everything I have learned since then about my opponent's shocking failure to perform her duties has justified that belief.

In my opinion, this is one of the most important races in this elecion. What happens on November 8 will determine for years in the the future the kind of school system our children will experience.

Even more important...it will determine in significant measure...the kind of future our students can look forward to.

Are our schools to be run by the teachers' union leadership? Or will they be run by the citizenry...the taxpayers...the parents and grandparents of our children?

We already have had many hints as to how the people feel. In the September 20th primary election, more than 60 percent of

the votes cast in District C, were against my opponent. I, myself, received just a few hundred votes less than Julie Fisher.

This was an unexpected and certainly amazing number, given the fact that my campaign only got off the ground a matter of weeks earlier. In fact I and my fellow candidates who opposed the incumbent in the District C race literally had to come from nowhere.

Still, my opponent failed to carry her own district -- a sad commentary on the way people of her own district perceive her performance.

You'll be interested to know that the two other candidates in District C who ran against her strongly support my candidacy. They are Jack DeBarrows and Barbara Brown.

The agree with me that the real issue in this campaign is my opponent.

She serves as an ever present tool to be used at will by the teachers' union leadership. She has used the board of education as her playtoy for nearly four years.

Listen to the San Diego Union. The newspaper last month said she "has been a solitary and disruptive force on the board during her one term."

The Union pointed out that Julie Fisher was the sole vote on the board of education against a plan for voluntary integration

drawn up by the Citizens' Advisory Committee for Racial Integration. This voluntary plan, which she voted against, was one which was laboriously developed by her colleagues, by the school administration and by a citizens' advisory commission.

During the process of drawing up that voluntary approach to integration, she violated her public trust by passing on confidential, privileged information to the plaintiffs in the Carlin Case. Superior Judge Welsh characterized her irresponsible actions as those of a "turncoat" and a "renegade."

To this day, we do not know what her position is on integration other than the fact that she voted against the voluntary plan I outlined earlier. And this is not surprising, because my opponent is a master of obfuscation, of confusion.

Let's try to cut through just a bit of that obfuscation for a moment.

She has suggested that her idea -- certainly not a plan -- would be to somehow institute a program of year-round schools. Precisely how this might bring about voluntary integration is a riddle at best.

Perhaps the best indicator of her sentiments was stated by her a few days ago. She said her plan would make Lincoln High School (now about 95 percent black) 60 percent

white and 40 percent black. This is what she said, regarding Lincoln High School.

I want you -- the members of this audience -- to ask my opponent during the question and answer session after the debate how she would bring about her desegregation plan. Unlike you I have seen and heard my opponent in many forums recently.

She is the master politician. She deliberately leaves most questions unanswered. She also combines evasion with sheer demagoguery. That is to say, no one knows what it really was that she said, but because it's simplistic it somehow sounds good.

Further, she has a different message for every group...depending on the group and what she thinks it wants to hear.

Now, these tricks have been used by crass politicians for a long time.

The fact is my opponent continues to shy away from the educational issues in this race. She doesn't want to talk about them. It may well be that she is shaky and unsure on the issues. I suspect it's really because her stands on the educational issues are unpopular enough that she simply doesn't want to speak freely about them.

Like, for example, amnesty for those teachers who walked out of classes...and left many thousands of kids to flounder.

Speaking of the teachers' union strike, I want to make it clear that two thousand of the city's teachers had the courage not to succumb to the pressure of the strikers.

Yet, my opponent, slapped in the face those teachers who stayed on the job and obeyed the law by rewarding those who broke the law and defied our courts.

I urge you in this audience to ask my opponent how she can be in favor of rewarding lawbreakers. Please ask how, as a member of the school board, she was able to give aid and comfort to the same teachers' union which chose to break the law and contemptuously ignore the order of a court of law.

Ask her how she can justify being a tool of a special interest group, the San Diego Teachers Association -- and expect to serve the interests of the community at large, including taxpayers and parents.

Ask her why she brings continual disruption to our school board.

Ask her why she votes against the majority of the school board on so many issues.

There are other questions. Many questions. Ask her about them. Examine the way in which she responds..if she responds at all.

As I told you before, I have never run for political office. Oh, I was elected student body president at Hoover High, and

I've had a number of leadership responsibilities in the community. I've been a member of the board of trustees of the State Universities and Colleges and I serve on the Advisory Board to San Diego State University. But, I've never run for political office.

I'm not a politician...the kind of person who wants to make it a career. Perhaps this race would be easier for me if I were. I am a woman--wife, mother, citizen -- who thinks something can be done to improve the quality of education for our children.

After all, our children are the only real future we have.

I know politics can be dirty. Campaigning is hard.

Campaigns are not always won on the issues. That is a political fact of life, albeit a sad one.

I want this campaign to be won on the issues. The Board of Education is simply too important to the life of our community and the educational needs of our children to be represented by cynical political reality.

Early in this campaign, I determined that I would not let personalities intrude. I would carry my beliefs forward, try and make them heard -- and understood -- so the voters could decide who would best represent the interests of our children.

As I've already indicated, my opponent has chosen not to do that. She is the master of the non-issue. The irrelevency. The red-herring. She is glib and slick at it. That's because she is truly a politician.

Unerstandably, she wants money for her campaign. she protests that she can't raise it. If we are to believe her, few want to contribute. If that's true -- because she indicates she's having a problem --then you can draw you own conclusions as to why.

But, like a true politician, my opponent continues to try to turn an embarrassing and telling negative around, and make political hay with it.

She wants the issue to be that Yvonne Larsen has financial support.

Yes. People from every corner of the community have seen fit to donate to my cause...because they are hoping for new reason to be injected into the Board of Education. They're appalled by my opponents' performance -- the disruption, the irresponsibility, the sham she represents.

They want what all of us as parents, taxpayers and citizens deserve. They want a better chance for our kids. A chance for the future in a society where the three "rs" are too often joined by a 4th today -- "Remedial"

They are fed up with the notion that laws are applicable only to those without political clout. That laws can be broken by those who have political friends on the school board.

I say it's time we get on with what this campaign is really all about. Not cheap politics, not obfuscation of the real issues, not the demagoguery of the politician, but educational issues that relate specifically to what we want for our children.

Again, I urge all of you in this audience to listen carefully to what my opponent has to say and to measure her on the way she addresses the real issues...the educational issues...of this campaign.